

REMARKS

This Response is filed in response to the first Office action mailed on 5 October 2004 (Paper No. 09292004).

Status of the Claims

Claims 1 through 28 are pending. No claims are amended; independent claim 25, together with claims 27 and 28 depending thereon, are newly added.

Newly Added Claims 25-28

Claims 25 through 28 are newly presented to provide coverage of Applicant's display under 35 U.S.C. §271(g) and (f).

Rejection Under Doctrine of Obviousness-Type Double Patenting

Claims 1 through 25 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1, 3, 4, 8, 10, 11, 14, 19, and 20 of Applicant's co-pending application Serial Number 10/767, 281.

By a separately submitted Preliminary Amendment, the claims of co-pending application number 10/767,281 have been amended. It is submitted that claims 1 through 25 of Applicant's above-captioned application are patentably distinguishable over claims 1, 3, 4, 8, 10, 11, 14, 19, and 20 of Applicant's co-pending application Serial No.

10/767,281, as well as claim 26 newly presented in Applicant's Serial No. 10/767,281, for the following reasons:

First, independent claims 1, 8, 14 and 21 of Applicant's co-pending application Serial No. 10/767,281 now define a structure with an aluminum alloy layer disposed between a pair of titanium layers and a diffusion prevention layer interposed between the aluminum alloy layer and each of the pair of titanium layers. On the other hand, independent claims 1, 11, 21 and 26 of the present application define a structure with an aluminum-based metal layer, a titanium layer, and a diffusion prevention layer interposed between the titanium and the aluminum-based layers.

Second, the Examiner has incorrectly interpreted the language of Applicant's pending claims by stating that both sets of claims recite an aluminum alloy disposed between a pair of titanium layers.¹ Rather, independent claims 1, 11, 21 and 26 of the above-captioned application broadly define a structure constructed with an aluminum-based metal layer and a titanium layer. As an aside, Applicant notes that a diffusion prevention layer is interposed between the aluminum-based metal layer and the titanium layer; consequently, there is no basis in fact in the Examiner's interpretation of the pending claims.

¹ What is unclear from the First Office action is whether the Examiner's interpretation of the rejected claims conforms with either the contextualist (see, by way of example, *Housey Pharmaceuticals, Inc. v. Astra-Zeneca Pharmaceuticals LP*, 03-1193 (Fed. Cir. 7 May 2004)) or the literalist (see, for example, *International Rectifier Corporation v. IXYS Corporation*, 02-1414, -1554 (Fed. Cir. 18 March 2004)) approach to claim interpretation.

Third, claims 3, 10, and 20 of Applicant's co-pending application Serial No. 10/767,281 have been canceled and the remaining claims amended.

Fourth, §804 of the *Manual of Patent Examining Procedure*, 8th Edition, Revision 2, May 2004, page 800-19, section 804(i)(B) states that:

“If the *provisional* double patenting rejection in one application is the only rejection remaining in that application, the Examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the *provisional* double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.”

Here, “the *provisional* double patenting rejection ... is the only rejection remaining” The issuance of a first Office action instead of permitting this “application to issue as a patent, was therefore improper. Withdrawal of the rejection and passage of this application to issue is respectfully requested because there are no remaining rejections, objections or reasons for delaying the reissue of the above-captioned application.

For these reasons, Applicant respectfully submits that claims 1 through 25 of the above-captioned application are patentable over the amended claims of Applicant's co-pending application number 10/767,281.

Fees Incurred

A fee of \$142.00 is incurred by the addition of one (1) independent claim in excess of total 3 and three (3) total claims in excess of total 25. Applicant's check drawn to the order of Commissioner accompanies this Amendment. Should the check become lost, be

deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

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In view of the above, it is submitted that the claims of this application are in condition for allowance, and early issuance thereof is solicited. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

Respectfully submitted,



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